In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 653

JOSE MARQUES COUTO, PETITIONER

v.

EDWARD J. SHAUGHNESSY, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION FOR THE DISTRICT OF NEW YORK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

Petitioner, an alien seaman, was granted shore leave for 29 days on February 24, 1953. He deserted his ship and continued to reside in the United States. On May 6, 1954, after a hearing before a Special Inquiry Officer at which petitioner was represented by counsel, he was ordered

deported, but granted the privilege of voluntary departure. (Pet. 7-9.) On June 10, his appeal to the Board of Immigration Appeals, attacking the order of deportation on the ground that the hearing did not conform to the Administrative Procedure Act, was dismissed (Pet. 10-12). On July 2, 1954, he filed in the District Court for the Southern District of New York, a petition for review of the deportation order, and sought a temporary injunction restraining his deportation. In his complaint, he renewed his contention that the deportation proceedings were void because of noncompliance with the Administrative Procedure Act. The district court denied the application for temporary injunction and granted the respondent's motion for summary judgement (Pet. 13-25). The order of the district court was affirmed by the Court of Appeals on January 20, 1955 (Pet. 26-29).

In his petition for certiorari, filed March 12, 1955 petitioner raises the question "Whether deportation hearings held under the Immigration and Nationality Act of June 27, 1952, must conform to any requirements of the Administrative Procedure Act" (Pet. 2). As he states (Pet. 4-5), the basic issue which he presents is now before this Court in *Marcello* v. *Bonds*, No. 145, this Term.[1] The

[1] Petitioner states that, in addition to the issues presented in the *Marcello* case, this case presents "the additional element whether [Section] 242 (b) of the Immigration and Nationality Act completely exempted deportation proceedings from the Administrative Procedure Act or merely the sections of said Act with which it is inconsistent" (Pet. 5). Apparently this refers to the argument, noted in the opinion of the

BLEED THROUGH POOR COPY

case also involves the jurisdictional question presently before this Court in *Shaughnessy* v. *Pedreiro*, No. 374, this Term, as to whether deportation proceedings are reviewable other than in habeas corpus.

Since therefore, the disposition of this case will depend upon the rulings of this Court in the two cases mentioned, it is respectfully suggested that the ruling on the petition for certiorari be deferred pending determination of such cases.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

APRIL 1955.

---

district court (Pet. 17-19), that since Section 242 (b) does not set forth express requirements concerning the status and tenure of special inquiry officers different from those specified in Section 11 of the Administrative Procedure Act, the latter applies even if the Procedure Act is not otherwise applicable to deportation proceedings. As the district court noted, however, Section 242 (b) of the Immigration Act provides that proceedings be conducted by "special inquiry officers", defined in Section 101 (b) (4) to mean "any immigration officer who the Attorney General deems specially qualified to conduct specified classes of proceedings * * *". This indicates that Congress intended "its definition of Special Inquiry Officer, which vested in the Attorney General the power to appoint and determine the status and tenure of the hearing officer, to control" independently of the provisions of the Administrative Procedure Act (Pet. 19). This matter is discussed in the brief for respondent in the *Marcello* case, pp. 17-21, and may well be determined by the ruling in that case.

☆ U. S. GOVERNMENT PRINTING OFFICE 1955 937824 1222